

REMARKS

Reconsideration of the application and claims in light of the foregoing amendments and following remarks is respectfully requested.

Status of the Claims:

Claims 4, 7, 9 and 11 are cancelled without prejudice or disclaimer of the subject matter contained therein. Claims 1-3, 5, 6, 8 and 10 were previously cancelled without prejudice or disclaimer of the subject matter contained therein. Claims 12 and 13 are new. No new matter has been added. Support for the new claims can be found, e.g., in original claim 4 and paragraphs [0094] and [0105]-[0107] of Applicants' printed publication, U.S. Publication No. 2008/0191620.

Claims 12 and 13 are now pending.

Status of the Specification:

The Examiner contends that "LIGHT EMITTING DEVICE AND ILLUMINATING DEVICE" is not a descriptive title. Applicants have amended the title respectfully submit that the amended title is fully descriptive and indicative of the claims presented herein. Applicants respectfully request that the objection be withdrawn.

Claim Rejections under 35 U.S.C. § 102:

Claims 4, 7, 9 and 11 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent Application Publication No. 2003/0080341 to Sakano et al. ("Sakano"). Claims 4, 7, 9 and 11 are cancelled herein, thereby rendering this rejection moot.

New Claims:

New claims 12 and 13 are directed to a method of manufacturing the inventive light emitting device previously set forth in claim 4. The new method claims are intended to give patentable weight to product by process limitations from now cancelled product claim 4, but are otherwise

directed to substantially the same subject matter. This is in response to the Examiner's comments regarding "product by process" claim limitations (Office Action mailed April 9, 2009, pages 3-5) Thus, Applicants respectfully submit that the same invention is claimed.

New claim 12 recites the step of "binding small particles of a phosphor in a crystal growth process so as to form secondary particles having a particle diameter between 5 and 10 μm ." Applicants respectfully submit that Sakano does not disclose forming secondary particles of a phosphor in a crystal growth process as called for in claim 12.

By contrast, Sakano describes forming a resin having a specified distribution of phosphors having various particle size. *See* Sakano, paragraph [0256]. Contrary to the Examiner's contentions, Sakano does not describe that the resulting phosphor layer contains secondary particles formed by binding small particles of the phosphor. Rather, at paragraph [0122], Sakano merely describes that various other elements, such as Ba, Sr, Mg, Ca, Zn or Si, may be added to the yttrium aluminum oxide fluorescent material (i.e., the phosphor) for various purposes. Sakano continues from there to describe different fluorescent materials that can be formed by substituting either yttrium or aluminum atoms of the phosphor with one or more metallic elements. *See* Sakano, paragraphs [0123]-[0126]. Thus, Sakano merely describes changing the chemical compositions of phosphors by incorporating non-fluorescent elements and does not describe binding small particles of the phosphor together to form secondary particles. Accordingly, Sakano is also silent as to any method of forming secondary particles, including the crystal growth process called for in claim 12.

Applicants respectfully submit that, because Sakano fails to disclose the step of binding small particles of a phosphor in a crystal growth process, it can not anticipate claim 12 or its dependent claim 13. Further, Applicants respectfully submit that Sakano is silent as to the addition of ammonium chloride as a flux called for in claim 13. Accordingly, Applicants respectfully submit that new claims 12 and 13 are patentably distinct from the teachings of Sakano.

CONCLUSION

In view of the foregoing amendments and arguments, the subsisting claims in this application are believed to be in condition for allowance and such action is earnestly solicited.

If there are any other issues remaining which the Examiner believes could be resolved through either a Supplemental Response or an Examiner's Amendment, the Examiner is respectfully requested to contact the undersigned at the telephone number set forth below.

Dated: July 9, 2009

Respectfully submitted,

By 

Louis J. DelJuidice

Registration No. 47,522

DARBY & DARBY P.C.

P.O. Box 770

Church Street Station

New York, New York 10008-0770

(212) 527-7700

(212) 527-7701 (Fax)

Attorneys/Agents For Applicant